

### Remarks

Applicant has carefully considered the Office Action dated December 7, 2005. Applicant respectfully requests reexamination and reconsideration of the application.

Claims 1-27 stand rejected under 35 USC section 103(a) as being unpatentable over United States Patent 6,769,028, Sass et al., hereafter Sass, already of record. In setting forth the rejection, the Examiner agrees with Applicants position that Sass fails to teach command options displayed in association with evaluation icons. However, the Examiner asserts that displayed command option messages or icons are commonly found in handheld devices such as PDAs and cell phones, where a limited number of buttons may be used for a wide variety of functions, as is the case in the media device of Sass. Specifically, the Examiner takes Official Notice that it is well-known in the art to display a message or icon associated with the function of a user – selectable button and that such messages are icons are commonly found in handheld devices such as PDAs and cell phones were limited number of buttons may be used for a wide variety of functions. The Examiner further asserts that, Sass teaches associating functions with the evaluation icons, such as switching streams in response to a negative evaluation, or referring the user to a product web site for a positive evaluation (Sass, col. 9; lines 19-29) and, therefore, that a combination of the well-known command option messages to display the function of the evaluation icons would be a plausible and obvious modification of Sass.

Applicant respectfully traverses the use of Official Notice as a grounds for rejection, and, in accordance with The Manual of Patent Examining Procedure section 2144.03, requests the Examiner to produce a reference in support of his assertion, or, alternatively, if such assertion is based on the personal knowledge of the Examiner, to provide Applicant with an affidavit averring to the specific facts supporting the personal knowledge on which the Examiner's statement is based. The Manual of Patent Examining Procedure section 2144.03(E) specifically states:

It is never appropriate to rely solely on common knowledge in the art without evidentiary support in the record as the principal evidence upon which a rejection was based. See *Zurko*, 258 F.3d at 1386, 59 USPQ2d at 1697; *Ahlert*, 424 F.2d at 1092, 165 USPQ 421.

In addition, the Manual of Patent Examining Procedure section 2144.03(C) specifically states:

If applicant adequately traverses the examiner's assertion of official notice, the examiner must provide documentary evidence in the next Office action if the rejection is to be maintained. See 37 CFR 1.104(c)(2). See also Zurko, 258 F.3d at 1386, 59 USPQ2d at 1697 ("[T]he Board [or examiner] must point to some concrete evidence in the record in support of these findings" to satisfy the substantial evidence test). If the examiner is relying on personal knowledge to support the finding of what is known in the art, the examiner must provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding. See 37 CFR 1.104(d)(2).

In taking Official Notice, the Examiner has not established that the claimed limitation(s) were present in Sass or in general use or well-known, as of the filing date of the invention. Further, even if the Examiner has properly taken Official Notice of the alleged teachings, such teachings to not disclose or suggest the subject matter claimed. That a single button or icon in a PDA or cell phone may be associated with a command function, or even sequentially with multiple functions, does not teach, disclose or suggest that those functions are activated, as in the present invention. A multiple function button in which each function is associated with the button one at a time, does not teach, disclose, or suggest *both* execution of the displayed command option and recordation of an evaluation rating upon the selection one of the evaluation options, as claimed in the present invention, i.e. two functions at once, versus two separate, sequentially executable functions from the same button, as alleged to the prior art.

Applicants claim language is clear. Applicants are not claiming the association of a single command option with an icon. Applicants are claiming the *initiation of execution of the displayed command option and recording an evaluation rating associated with the identified one of the plurality of evaluation feedback options* with the same action. Even if the Examiner's argument that the association of command options and functions would be a plausible and obvious modification of Sass, which Applicant

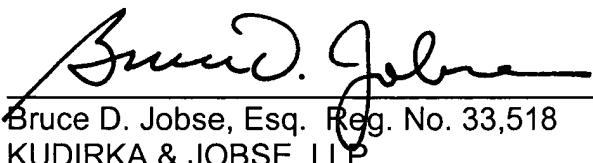
does not admit as correct, the Examiner has not shown where there would be a motivation or teaching to modify Sass, as now recited.

In the prior office action, claim 1 was amended to recite a method including the limitations of displaying an evaluation component comprising at least one displayed command option and a plurality of evaluation feedback options and “upon receipt of the user selection criteria identifying one of the plurality of evaluation feedback options, *initiating execution of the displayed command option and recording an evaluation rating associated with the identified one of the plurality of evaluation feedback options*” (Claim 1, lines 9-12). Claims 12, 16-17, 24, and 26 were also amended to recite similar limitations (Claim 12, lines 13-16; claim 16, lines 10-13; claim 17, lines 9-12; claim 24, lines 9-12; and claim 26, lines 9-12).

Sass does not disclose a system or technique in which selecting one of the evaluation icons, both initiates *execution of the displayed command option and recordation of an evaluation rating associated with the selected evaluation icon*, as now recited in each of the pending independent claims. Accordingly, applicant respectfully traverses the examiner’s rejection on the grounds that the Examiner has failed to create a *prima facie* case of obviousness, which requires 1) the prior art reference (or references when combined) must teach or suggest *all* of the claim limitations; and 2) there must be some suggestion or motivation to modify a reference or combine references.

Applicant believes the claims are in allowable condition. A notice of allowance for this application is solicited earnestly. If the Examiner has any further questions regarding this amendment, he/she is invited to call Applicant’s attorney at the number listed below. The Examiner is hereby authorized to charge any fees or credit any balances under 37 CFR §1.17, and 1.16 to Deposit Account No. DA-12-2158.

Respectfully submitted,

  
Bruce D. Jobse, Esq. Reg. No. 33,518  
KUDIRKA & JOBSE, LLP  
Customer Number 021127  
Tel: (617) 367-4600 Fax: (617) 367-4656

Date: 3/6/06